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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KATHERINE WOO

Appeal 2008-2955
Application 10/791,156
Technology Center 3600

Decided:¹ January 30, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
DAVID B. WALKER, *Administrative Patent Judges*.

Opinion by LORIN, *Administrative Patent Judge*.

Dissenting Opinion by WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Katherine Woo (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-24. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.²

THE INVENTION

The invention “relates generally to the field of e-commerce and, more specifically, to integrating third party shopping cart applications with an online payment service.” Specification [0002]. “Typically, merchants use customized shopping cart applications for providing a shopping cart flow and an independent online payment service (e.g., PayPal®) for handling payment transactions.” Specification [0003]. According to an aspect of the invention, “detailed information concerning items placed by a user in a virtual shopping cart hosted by a merchant web site is received from a third party shopping cart application. The detailed information is sent by the third party shopping cart application in response to a user request to proceed with a payment for the items. Once detailed information is received, the user is presented with one or more user interfaces facilitating the payment. The user interfaces allow the user to view the content of the virtual shopping cart.” Specification [0005].

² Our decision will make reference to Appellant’s Appeal Brief (“App. Br.,” filed Jun. 18, 2007) and Reply Brief (“Reply Br.,” filed Nov. 13, 2007), and the Examiner’s Answer (“Answer,” mailed Sep. 12, 2007).

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A computer-implemented method comprising:
receiving, from a shopping cart application, detailed information concerning one or more items placed by a user in a virtual shopping cart hosted by a merchant web site, the shopping cart application being external to an online payment service, the detailed information being sent by the shopping cart application in response to a user request to proceed with a payment for the one or more items; and
upon receiving the detailed information from the shopping cart application, communicating to the user via a communications network one or more user interfaces that facilitate processing of the payment for the one or more items, the one or more user interfaces allowing the user to view content of the virtual shopping cart.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Sacks	US 2002/0016765 A1	Feb. 7, 2002
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The following rejection is before us for review:

1. Claims 1-24 are rejected under 35 U.S.C. §102(b) as being anticipated by Sacks.

ISSUE

The issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 1-24 under 35 U.S.C. §102(b) as being

anticipated by Sacks. The issue turns on whether Sacks expressly or inherently describes the claim limitations “the shopping cart application being external to an online payment service” and “a virtual shopping cart hosted by a merchant web site.”

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 is drawn to a computer-implemented method comprising using a shopping cart application hosted by a web site and an online payment service.
2. Claim 1 describes the shopping cart application as “being external to an online payment service.”
3. The Specification does not provide a definition for “external”.
4. The ordinary and customary meaning of “external” is “on or having to do with the outside; outer; exterior.” (*See Webster’s New World Dictionary* p. 481 (3rd Ed. 1988.)(Entry 1. for “external.”)
5. Claim 1 describes the virtual shopping cart is hosted by a “merchant” web site.
6. The Specification does not provide a definition for “merchant”.

7. The ordinary and customary meaning of “merchant” is “of or used in trade.” (*See Webster’s New World Dictionary* p. 848 (3rd Ed. 1988.)(Entry 1. (adj.) for “merchant.”)

Sacks

8. Sacks relates to a method and system for handling payments between buyers and sellers to a third-party website whereby, for example, a buyer on a seller website is redirected to the third-party payment processor to process payment. [0004]
9. Fig. 2 of Sacks’s shows a payment processor 200 comprising various components, including a “payment processing module 212” and a “database 210.”
10. The database 210 may store a shopping cart. [0034] (“Database 210 stores various user information concerning buyers and sellers, such as ... buyer shopping carts, ... etc. .”)
11. The “payment processing module 212 interfaces with external financial entities (e.g., banks, credit card issuers, merchant acquirers, ACH vendors) for completing payments from a buyer and/or to a seller.” [0033].
12. Sacks’s payment processor forms a website operated by a party. [0004].

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one

of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). “[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Claim 1

“A determination that a claim is anticipated under 35 U.S.C. § 102(b) involves two analytical steps. First, the Board must interpret the claim language, where necessary. Because the PTO is entitled to give claims their broadest reasonable interpretation, our review of the Board’s claim construction is limited to determining whether it was reasonable. *In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997). Secondly, the Board must

compare the construed claim to a prior art reference and make factual findings that “each and every limitation is found either expressly or inherently in [that] single prior art reference.” *Celeritas Techs. Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998).” *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

Claim 1 defines a method comprising two steps. In the first step, a virtual shopping cart application sends detailed information concerning one or more items placed by a user in a virtual shopping cart in response to a user request to proceed with a payment for the one or more items. According to claim 1, the virtual shopping cart application is “external” to an online payment service and the virtual shopping cart is hosted by a “merchant” web site. In the second step, once the detailed information concerning one or more items placed by a user in a virtual shopping cart is received from the shopping cart application, one or more user interfaces that facilitate processing of the payment for the one or more items is communicated to the user via a communications network. According to claim 1, the one or more user interfaces allows the user to view the contents of the virtual shopping cart.

No term used in the claim is provided with a corresponding definition in the Specification. Accordingly, we look to the words of the claim, giving each their ordinary and customary meaning. “Claim construction begins, as it must, with the words of the claims. *See Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 619-20 (Fed. Cir. 1995).” *Vehicular Techs. Corp. v. Titan Wheel Int’l*, 141 F.3d 1084, 1088 (Fed. Cir. 1998). But we determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving

claims “their broadest reasonable interpretation consistent with the specification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Our interpretation of disputed language must be reasonable in light of all the evidence before the Board. *See In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997) (“The question then is whether the PTO’s interpretation of the disputed claim language is “reasonable.” ... We conclude that the PTO’s interpretation is reasonable in light of all the evidence before the Board.”).

As it is commonly understood, a virtual shopping cart application is an application which facilitates a user selecting an item from an online catalogue and transferring the selected item to a virtual shopping cart where the item sits until such time the user decides to check-out and proceed to pay for the selected items in the cart.³ In that respect, the first step of the claimed

³ *Cf. Amazon.com, Inc. v. BarnesandNoble.com, Inc.*, 239 F.3d 1343, 1347 (Fed. Cir. 2001):

In previous incarnations of the shopping cart model, a purchaser using a client computer system (such as a personal computer executing a web browser program) could select an item from an electronic catalog, typically by clicking on an “Add to Shopping Cart” icon, thereby placing the item in the “virtual” shopping cart. Other items from the catalog could be added to the shopping cart in the same manner. When the shopper completed the selecting process, the electronic commercial event would move to the check-out counter, so to speak. Then, information regarding the purchaser’s identity, billing and shipping

process reiterates the generally-understood operation of a virtual shopping cart application.

The second step of the claimed process calls for communicating an interface to the user to facilitate processing of the payment and allow the user to view the contents of the virtual shopping cart once selected items for purchase are placed in the shopping cart. Since a web page is a well known example of an interface, the second step of the claim broadly covers presenting to the user a web page to both view the contents of the virtual shopping cart and facilitate processing for the payment of selected items in the cart.

As for the limitation that the virtual shopping cart application is “external” to an online payment service, given “external”’s ordinary and customary meaning (FF 4), the claimed method requires the virtual shopping cart application to be *outside* an online payment service (e.g., PayPal®, see Specification [0003]).

As for the limitation that the virtual shopping cart is hosted by a “merchant” web site, given “merchant”’s ordinary and customary meaning (FF 7), the claimed method requires the virtual shopping cart to be hosted by a web site pertaining to trade.

addresses, and credit payment method would be inserted into the transactional information base by the soon-to-be purchaser. Finally, the purchaser would “click” on a button displayed on the screen or somehow issue a command to execute the completed order, and the server computer system would verify and store the information concerning the transaction.

Putting it all together, the broadest reasonable construction of claim 1 in light of the Specification as it would be interpreted by one of ordinary skill in the art is that it describes a method for using a virtual shopping cart application, situated *outside* an online payment service, to operate a virtual shopping cart hosted by a *merchant* web site to present to the user of the shopping cart a web page to both view the contents of the virtual shopping cart and facilitate processing for the payment of selected items in the cart.

We turn now to the second step of the anticipation analysis.

Sacks (FF 9-12) shows using a payment processor comprising various components, including a “payment processing module.” The “payment processing module” of the payment processor interfaces with external financial entities and is thus outside an online payment service. This would appear to meet the claimed limitation that the virtual shopping cart application is “external” to an online payment service. The Sacks payment processor further forms a website operated by a third-party to process a buyer’s payment for a transaction made with an online seller. It comprises a seller interface and a buyer interface and the buyer interface may be used to update a shopping cart. See [0032]. The shopping cart (e.g., a buyer’s shopping cart) may be stored in a database on the payment processor and managed by the payment processor (see [0028]). Thus, the payment processor hosts the shopping cart. Since Sack’s third-party payment-processing website hosts the shopping cart and is used in trade, Sack’s website represents a “merchant” website hosting a shopping cart and thus appears to meet the claim limitation the virtual shopping cart is hosted by a “merchant” web site. Finally, as the Examiner has explained (Answer 3), Sacks describes its method as receiving information from the shopping cart

(including e.g., item name, see [0017]) in response to a user request to proceed with payment for a selected item and communicating to the user an interface to facilitate processing of the payment (see [0016]). Accordingly, it would appear that Sacks describes the operation of a virtual shopping cart application to the extent claimed.

Having compared the claim, in its broadest reasonable construction in light of the Specification as it would be interpreted by one of ordinary skill in the art, to Sacks and finding that all the limitation of the claim are expressly described therein, we agree with the Examiner that Sacks anticipates the claimed subject matter.

The Appellant disagrees.

The Appellant argues that “Sacks fails to disclose the element ‘the shopping cart application being external to an online payment service’ as recited in claim 1.” App. Br. 11. (See also Reply Br. 2-6 for similar arguments.) The Appellant explained that Sacks describes a third-party payment processor which may provide a shopping cart. *Id.* The Appellant reproduced passages from Sacks ([0028], [0030], and [0034]) which describe the payment processor 200 (see Fig. 2) that comprises a database 210 and which database stores, among other things, “buyer shopping carts.” *Id.* According to the Appellants, this shows that Sacks’ shopping cart is internal, not external, of the payment processor. Thus, according to the Appellant, Sacks does not describe the claimed limitation “the shopping cart application being external to an online payment service.” *Id.*

We are not persuaded by this argument.

It is quite clear from looking at Fig. 2 that Sacks’s payment processor 200 is a system made up of various components, including a “payment

processing module 212” and a “database 210.” FF 9. While the database 210, as the Appellant has indicated, may store a shopping cart (FF 10), the “payment processing module 212 interfaces with external financial entities (e.g., banks, credit card issuers, merchant acquirers, ACH vendors) for completing payments from a buyer and/or to a seller” ([0033]). FF 11. Thus, Sacks’s payment processing module is *external* (given the ordinary and customary meaning of the term “external” (FF 4)) to the database storing the shopping cart, as are the financial entities for completing payments from a buyer and/or to a seller that interface with the payment processing module. Since the shopping cart resides on the database, it is necessarily situated *external* to the payment services interfacing with the payment processing module. Given that perspective of Sacks’s system, we agree with the Examiner that Sacks describes the claimed limitation “the shopping cart application being external to an online payment service.”

The Appellant also argues that “Sacks also fails to disclose the element “a virtual shopping cart hosted by a merchant web site” as recited in claim 1.” App. Br. 12. (See also Reply Br. 2-6 for similar arguments.)

We are not persuaded by this argument.

The aforesaid payment processor (see Sacks, Fig. 2) includes a communication interface linked to a seller and a buyer interfaces which are linked to the database storing the shopping cart. Sacks’s payment processor forms a website that is operated by a party. FF 12. Sacks describes the party as a third-party for processing a buyer’s payment for a transaction made with an online seller. Accordingly, the Appellant is correct in contending that Sacks discloses a shopping cart maintained by a third party payment processor. App. Br. 12 and Reply Br. 3. However, the claimed method

requires only that the web site hosting the shopping cart be a merchant web site, whether or not it belongs to a third party. Thus the claim broadly encompasses any web site used in trade. In that regard, the Sacks third party payment processor is a web site used in trade. This is evidenced by the fact that buyer and seller websites are connected to the shopping cart via the third party payment website in order that they may be able to communicate with it. Because it is used in trade, the claim reads on the Sacks third party payment processor. “The law of anticipation does not require that the reference “teach” what the subject patent teaches. Assuming that a reference is properly “prior art,” it is only necessary that the claims under attack, as construed by the court, “read on” something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or “fully met” by it.” *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

We have addressed all the arguments the Appellant has raised. For the foregoing reasons, we find the arguments unpersuasive as to error in the rejection. Accordingly we sustain the rejection.

Claims 10 and 18

The Appellant addresses the rejection of claims 10 and 18 at App. Br. 12. The arguments made there are the same two arguments the Appellant made in challenging the rejection of claim 1. Since we found them unpersuasive as to error in that rejection, we reach the same conclusion with respect to the rejection of these claims. The rejection of claims 10 and 18 is sustained.

Claim 22

The Appellant addresses the rejection of claim 22 at App. Br. 13. The arguments made there are the same two arguments the Appellant made in challenging the rejection of claim 1. Since we found them unpersuasive as to error in that rejection, we reach the same conclusion with respect to the rejection of claim 22. The rejection of claim 22 is sustained.

Claims 2-9, 11-17, 19-21, 23, and 24

The Appellant addresses the rejection of claims 2-9, 11-17, 19-21, 23, and 24 at App. Br. 13. The arguments made there are the same two arguments the Appellant made in challenging the rejection of claim 1. Since we found them unpersuasive as to error in that rejection, we reach the same conclusion with respect to the rejection of claims 2-9, 11-17, 19-21, 23, and 24. The rejection of claims 2-9, 11-17, 19-21, 23, and 24 is sustained.

CONCLUSION

We conclude that the Appellant has not shown that the Examiner erred in rejecting claims 1-24 under 35 U.S.C. §102(b) as being anticipated by Sacks.

DECISION

The decision of the Examiner to reject claims 1-24 is affirmed.

AFFIRMED

WALKER, Administrative Patent Judge, dissenting.

I do not agree with the majority that there is no patentable distinction between a “merchant” website and a “third party” website. In reaching this conclusion, the majority has applied a construction of “a virtual shopping cart hosted by a merchant website” that is counter to its plain meaning and inconsistent with the Appellant’s Specification. Because Sacks fails to teach or suggest the limitation “a virtual shopping cart hosted by a merchant website,” when properly construed, I respectfully dissent.

We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)).

The Specification teaches in the “Background of the Invention” that “Merchants are increasingly selling products and services via various online commerce facilities such as merchant web sites, online auctions, etc. On merchant web sites, products are typically sold using the ‘shopping cart’ model that allows a customer to select an item from an electronic catalog and then metaphorically adds the selected item to a shopping cart.” (Specification, 2:[0003]). The Specification discloses that the merchant web site can be a retailer or wholesaler web site visited by various buyers including the users of the clients 102. A third party shopping cart application 112 is defined as an application external to the online payment service 110 that is developed by an external developer/company to allow a merchant or another third party to host a shopping cart on its web site. The

shopping cart hosted by a merchant or any other third party is referred to in the Specification as a third party shopping cart (Specification, 6-7:[0020]). The Specification thus differentiates between a merchant and another third party. While either is capable of hosting a third party shopping cart (Specification, 6-7:[0020]), the plain language of the claims requires that a virtual shopping cart be hosted by a merchant website.

The Appellant argues that the rejection of claims 1-24 is inappropriate, because Sacks lacks an express limitation present in each of the claims on appeal, namely “a virtual shopping cart hosted by a merchant website” (Br. 12). In particular, the Appellant argues that the Examiner found that “. . . in order for information to be collected at the merchant and later transferred to the payment processor, an application must be present on the merchant server to perform the processing,” which appears to assume that it is inherent in Sacks that the shopping cart must be present on the merchant server. The Appellant further argues that because Sacks states “the buyer's shopping cart is maintained by the third party”, it is clear that Sacks does not disclose “a virtual shopping cart hosted by a merchant web site” as recited in claim 1 (*Id.*, citing Sacks, 3:[0028]).

The Examiner found that the virtual shopping cart is clearly hosted by the merchant, in that the purchase information is collected/stored at the merchant and then later transferred to the payment processor (Answer 5). The Examiner introduced a Microsoft Computer Dictionary definition to “offer a clear meaning of an electronic shopping cart.” (*Id.*). The Examiner thus found shopping cart to mean a “file in which an online customer stores information on potential purchases until ready to order.” (*Id.*). According to the Examiner, based on this understanding of what constitutes a shopping

cart, paragraphs [0017] and [0020] of Sacks clearly teach stored purchase information that is later transferred/redirected to a third party payment processor (*Id.*).

The passages of Sacks relied upon by the Examiner teach that once a buyer selects an item from a seller's catalog, the buyer is transferred or redirected to the third-party payment processor. With the buyer's connection, the payment processor may receive various information, such as a description of an item being purchased (e.g., name item number, quantity, color, price). Sacks notes that the seller may be an online merchant (Sacks 2:[0017] & [0020]). Contrary to the Examiner's findings, Sacks thus teaches that the buyer, and not the seller or merchant, transfers the detailed information to the third party payment processor.

I believe that the Examiner's construction of shopping cart is consistent with the broadest reasonable interpretation of that term. There is no dispute that Sacks teaches a shopping cart. However, there is no teaching in Sacks that the purchase information is collected/stored at the seller/merchant website prior to being transferred to the payment processor. In fact, Sacks describes the third party as receiving a connection from the buyer and processing the buyer's payment using information provided by the user and/or details of the present transaction received by the buyer's connection (Sacks 2:[0016]).

Sacks also teaches that the payment processor may provide a third-party shopping cart to track the buyer's purchases, which permits the buyer to change the quantity of an item, remove an item from the cart, initiate payment for the items, or return to the seller's site. Because the shopping cart is maintained by the third party, it may be used for purchases or

transactions involving multiple sellers (Sacks, 3:[0028]). The shopping cart of this embodiment also is not hosted by a merchant website.

The Majority concedes that the “Appellant is correct in contending that Sacks discloses a shopping cart maintained by a third party payment processor.” (Majority Op. at 13). According to the Majority:

However, the claimed method requires only that the web site hosting the shopping cart be a merchant web site, whether or not it belongs to a third party. Thus the claim broadly encompasses any web site used in trade. In that regard, the Sacks third party payment processor is a web site used in trade.

(*Id.*) . I disagree. Like the Specification, Sacks differentiates between the seller, which may be an online merchant, and the third-party, which serves as the payment processor (Sacks, 2:[0016]). The structural arrangement of Sacks, in which the seller provides a website for selection of goods by a buyer who sends those selections to a third party for payment processing, thus is different from that of the claimed invention, in which the merchant maintains a shopping cart of buyer selections and then forwards detailed information about those selections to the third party payment processor.

I believe that the definition adopted by the majority for merchant thus is inconsistent with the Specification and the Appellant’s arguments during prosecution, which require the virtual shopping cart to be hosted by a merchant or seller website, not just any web site pertaining to trade. An alternate definition of merchant that would be consistent with the Specification is “a buyer and seller of commodities for profit; trader.” (*See Webster’s Third New International Dictionary* p. 848 (1981)(Entry 1. (n.) for “merchant”). A merchant web site thus would be limited to a website of

a buyer or seller of commodities, which would exclude the third party payment processor of Sacks. As discussed above, the Specification differentiates between the merchant and the third party, and the plain language of claim 1 requires that the virtual shopping cart be hosted by a merchant website and not a third-party website. Sacks similarly differentiates between the seller or merchant and the third party payment processor, and teaches that the third party payment processor maintains the shopping cart to permit the shopping cart to be used for purchases or transactions involving multiple sellers. Sacks thus does not teach the limitation of a virtual shopping cart hosted by a merchant website.

Because the Examiner thus has failed to show that Sacks teaches each of the claim limitations, I would reverse the rejection of claims 1-24 under 35 U.S.C. § 102(b) as anticipated by Sacks.

vsh

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